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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
U.I.L.B., 3rd Floor
Washington, D.C. 20536

FILE # [REDACTED] Office: California Service Center

Date:

IN RE: Petitioner:
Beneficiary:

[REDACTED]

JAN 09 2003

APPLICATION: Petition for Alien Fiancé(e) under Section 101(a)(15)(K) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

IN BEHALF OF APPLICANT: Self-represented

PUBLIC COPY

INSTRUCTIONS:


This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a citizen of the United States. The beneficiary is a native and citizen of Kazakhstan. The director denied the petition after determining that the petitioner's prior marriage had not been legally terminated and he was not free to marry.

On appeal, the petitioner states that he had previously submitted a Certificate of Divorce showing that he was divorced from [REDACTED] on November 30, 1976. The petitioner submits another copy of that document.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K), provides nonimmigrant classification to an alien who:

- (i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;

- (ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or

- (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

The burden is on the petitioner to provide satisfactory evidence that he is free to marry. The document in question is an Interlocutory Judgement of Dissolution of Marriage issued on November 30, 1976. The document clearly states that the interlocutory judgement does not constitute final dissolution of the marriage and the parties are still married and will be, and neither party may remarry until a final judgement of dissolution is entered. It is noted that the petitioner remarried on two subsequent occasions and those two marriages were terminated by dissolution.

The record fails to contain a final judgement of dissolution of his first marriage. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.